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EXAMINER

STEPHENS III, JOSE S

ART UNIT	PAPER NUMBER
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3728

NOTIFICATION DATE	DELIVERY MODE
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08/18/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/566,093	Applicant(s) LANCESSEUR ET AL.	
	Examiner JOSE S. STEPHENS III	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-20 and 23-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-20 and 23-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment filed 15 April 2010. Claims 1-3, 7-20, and 23-39 are pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-3, 7-11, 15-17, 19, 20, 23-31, and 34-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giraud et al. (US 2004/0065669) in view of Simpson et al. (US Patent 6,000,550), further in view of Bozinovich et al. (US Patent 4,702,389).

With respect to claim 1, figure 7 of Giraud discloses a desiccant container (container in figure 7), with increased tightness, made of thermoplastic polymer materials ([0019], lines 1-3), for the packaging of products sensitive to ambient

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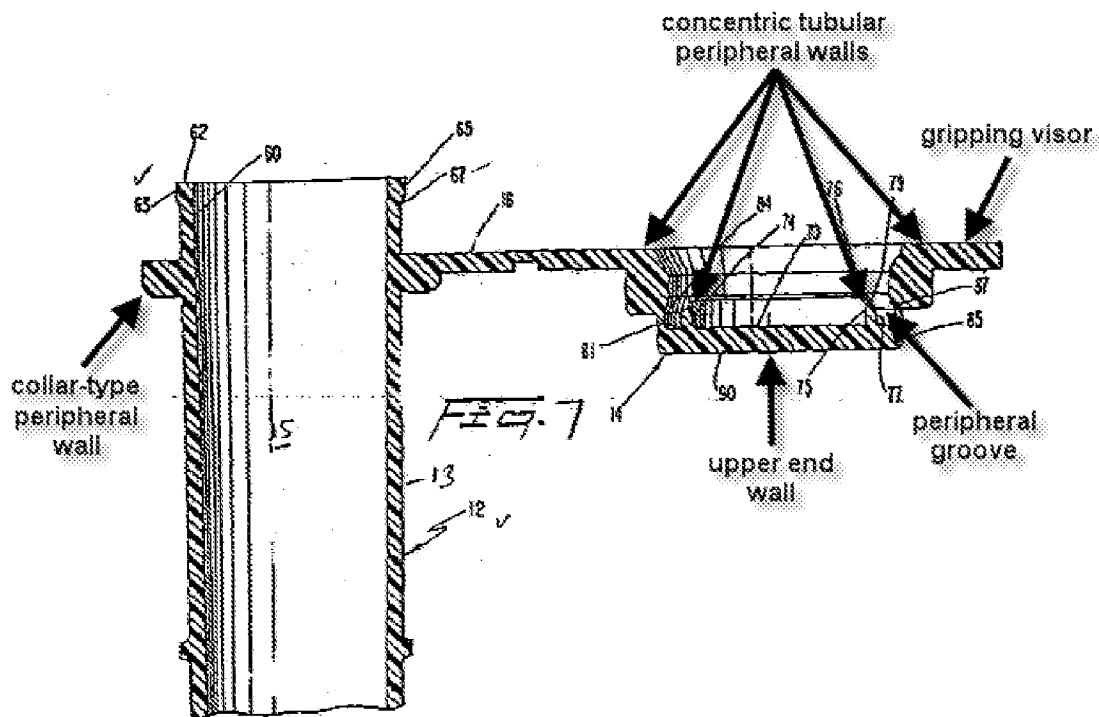
moisture, presented in processed or unprocessed forms comprising a tubular casing 12, forming a product packaging zone 15, the tubular casing being closed at a first end by a base (bottom of container) and open at a second end (top of container) and containing a tubular wall extending from said base to said open second end, sealing means 14 at the second end of the tubular casing, connection means (hinge) disposed between the sealing means and the tubular casing, packaging means of a desiccant agent ([0028], lines 1-7) placed on an inner face of the sealing means, a collar-type outer peripheral stop (see subsequent figure), disposed in a vicinity of the open end of the tubular casing, the sealing means being supported in a closed position thereof, wherein, the sealing means of the open end of the tubular casing comprises a cap-lid 14 coaxial with the tubular casing, the cap-lid comprising an upper end wall and two concentric tubular peripheral walls (see subsequent figure) comprising one inner wall and one outer wall (see subsequent figure), the inner wall and outer wall forming together a peripheral groove (see subsequent figure) having walls distanced from each other to cover, when the sealing means is closed, a peripheral wall of the open end of the tubular casing up to the outer peripheral stop.

Giraud discloses the claimed invention except for the connection means between the tubular casing and the sealing means comprises a mechanical hinge, ensuring the precision of closure, the mechanical hinge being formed by a male part incorporated in the tubular casing and a female part incorporated in the cap-lid, the male part comprising two bracket plates connected to each other by a

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rotation axis, and the outer wall of the peripheral groove being rendered discontinuous by notches formed to house the bracket plates, and wherein an upper edge of an outer surface of the open end of the wall of the tubular casing comprises a protuberance which extends only partially around a circumference of the open end of the wall of the tubular casing and wherein the protuberance contacts the inner surface of the outer wall of the cap lid when the cap lid is closed onto the tubular casing.

Figures 2A-7 of Simpson disclose a mechanical hinge (hinge shown in figure 2A), ensuring the precision of closure, the mechanical hinge being formed by a male part (part shown in figure 7) and a female part (part shown in figure 3), the male part comprising two bracket plates (82 and 84) connected to each other by a rotation axis 88, and notches (where bracket plates rest) formed to house the bracket plates. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the connection means of Giraud by incorporating a mechanical hinge in order to facilitate disassembly of the tubular casing and the sealing means, as taught by Simpson (column 3, lines 19-38).



The combination of Giraud in view of Simpson discloses the claimed invention except for an upper edge of an outer surface of the open end of the wall of the tubular casing comprises a protuberance which extends only partially around a circumference of the open end of the wall of the tubular casing and wherein the protuberance contacts the inner surface of the outer wall of the cap lid when the cap lid is closed onto the tubular casing.

Figures 1-5 of Bozinovich disclose a container comprising a tubular casing 30 including a protuberance 32 which extends around the circumference of the open end of the tubular casing and wherein the protuberance contacts an interrupted protuberance 16 of a cap lid 10 when the cap lid is closed onto the tubular casing. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of

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Simpson by incorporating a protuberance that extends only partially around a circumference of the open end of the tubular casing. The principle operation of securing the lid to the tubular casing is not changed by extending the protuberance only partially around a circumference of the open end of the tubular casing. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. *KSR* at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

With respect to claim 2, Giraud further discloses a first surface-to-surface type peripheral tightness zone is established between the outer wall of the peripheral groove and an outer face of the wall of the second end of the tubular casing.

With respect to claim 3, Giraud further discloses a second surface-to-surface type peripheral tightness zone is created between a peripheral base of the peripheral groove and a peripheral edge of the second end of the tubular casing.

With respect to claim 7, figure 7 of Giraud further discloses a peripheral edge 63 of the second end of the casing is in the prolongation of the casing.

With respect to claim 8, figure 7 of Giraud further discloses a peripheral edge 63 of the second end of the casing protrudes from the casing.

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With respect to claim 9, Giraud further discloses the distance between the inner and outer walls of the groove is at least equal to the thickness of the tubular casing (see previous figure).

With respect to claim 10, Giraud further discloses a third surface-to-surface type peripheral tightness zone is established between an inner surface of the inner wall of the peripheral groove and an inner surface of the second end.

With respect to claim 11, Giraud further discloses the contact height of the third surface- to-surface type peripheral tightness zone extends from a lower end of the inner wall to a base of the groove.

With respect to claim 15, Giraud further discloses a fourth surface-to-surface type peripheral tightness zone is established between a plane lower edge of the outer wall of the groove and a plate of the outer peripheral stop.

With respect to claim 16, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the depth of the peripheral groove is from 45% to 95% of the thickness of the cap-lid measured on the outer wall of the groove. It would have been an obvious matter of design choice to modify the dimensions of the container, since such a modification would have involved a mere change in the size of a component. A change in size is recognized as being within the level of ordinary skill in the art. In *Gardner v. TEC Systems, Inc.*, 220 USPQ 777 (Fed. Cir. 1884), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

With respect to claim 17, Giraud further discloses the outer wall of the peripheral groove is continuous (see previous figure).

With respect to claim 19, Giraud further discloses the cap-lid is equipped with a gripping visor (see previous figure).

With respect to claim 20, figure 7 Giraud further discloses an inner face of the outer wall of the groove and an outer face of the outer wall of the tubular casing are equipped with snap-on means 63.

With respect to claim 23, figures 2A-7 of Simpson further disclose the rotation axis is prolonged beyond both bracket plates by protruding ends. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by incorporating a mechanical hinge where the rotation axis extends beyond both bracket plates by protruding ends in order to facilitate disassembly of the tubular casing and the sealing means, as taught by Simpson (column 3, lines 19-38).

With respect to claim 24, figures 2A-7 of Simpson further disclose the female part of the hinge comprises two bracket plates (32 and 34) placed at a distance with respect to each other such that the plates can encompass the bracket plates of the male part of the hinge, and a second groove 72 intended to receive the rotation axis. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by incorporating two bracket plates placed at a distance with respect to each other on the female part such that the plates can encompass the bracket plates of the male part of the hinge, and a second groove intended to receive the rotation axis in order to facilitate

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disassembly of the tubular casing and the sealing means, as taught by Simpson (column 3, lines 19-38).

With respect to claim 25, figure 5 of Simpson further discloses the bracket plates of the female part are equipped with orifices 44 to receive the protruding ends of the rotation axis. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by incorporating a mechanical hinge where the bracket plates of said female part are equipped with orifices to receive the protruding ends of the rotation axis in order to facilitate disassembly of the tubular casing and the sealing means, as taught by Simpson (column 3, lines 19-38).

With respect to claim 26, figure 2A of Simpson further discloses the length of the second groove intended to receive the rotation axis is at most equal to the distance existing between the inner faces of the bracket plates. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by incorporating a mechanical hinge where the length of the second groove intended to receive the rotation axis is at most equal to the distance existing between the inner faces of the bracket plates in order to facilitate disassembly of the tubular casing and the sealing means, as taught by Simpson (column 3, lines 19-38).

With respect to claim 27, Giraud further discloses a disc, puck, sleeve, or other shapes either conforms to a part of the container or is placed within the

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container. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by placing the packaging means of a desiccant agent on the inner face of the cap-lid is tubular in order to absorb moisture that may enter the container, as taught by Giraud ([0028], lines 1-5).

With respect to claim 28, Giraud further discloses the tubular casing and the cap-lid are produced together with the same thermoplastic polymer composition ([0019], lines 1-3).

With respect to claim 29, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the tubular casing and the cap-lid are produced with different thermoplastic polymer compositions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to produce the tubular casing and the cap-lid with different thermoplastic polymer compositions, since it has been that the selection of a known material on the basis of its suitability for the intended use is an obvious extension of prior art teachings. *In re Leshin*, 125 USPQ 416.

With respect to claim 30, Giraud further discloses the tubular casing and the cap-lid are produced using plastics technology methods using the thermoplastic polymer composition polyethylenes or polypropylenes ([0019], lines 1-3).

With respect to claim 31, Giraud further discloses the thermoplastic composition is associated with an elastomer synthetic origin ([0019], lines 1-3).

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With respect to claims 34, 38, and 39, to the extent that the prior art apparatus has the same limitations as the instant invention, the prior art apparatus performs the method steps as claimed.

With respect to claim 35, Giraud further discloses the cap-lid forms four successive surface- to-surface type tightness peripheral zones forming four successive tightness barriers between the second end of the tubular casing and the cap-lid.

With respect to claim 36, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the protuberance does not extend to that portion of the wall of the tubular casing closest to the hinge when the cap lid is closed on the tubular casing. It would have been obvious to one having ordinary skill in the art at the time of the invention to not position the interrupted protuberance on a portion of the tubular casing closest to the hinge. The interrupted protuberance of Bozinovich obviously performs the same function regardless of its location. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. *KSR* at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

With respect to claim 37, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the protuberance contacts that portion of the wall of the tubular casing furthest from the hinge when the cap lid is closed on the tubular casing. It would have been obvious to one having ordinary skill in the art at the time of the invention to not position the interrupted protuberance on a portion of the tubular casing furthest from the hinge. The interrupted protuberance of Bozinovich obviously performs the same function regardless of its location. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. *KSR* at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giraud et al. (US 2004/0065669) in view of Simpson et al. (US Patent 6,000,550), further in view of Bozinovich et al. (US Patent 4,702,389) as applied to claim 1 above, and further in view of Altherr (US Patent 5,270,011).

With respect to claim 12, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the height of the inner wall of the groove is at least equal to the height of the outer wall of the groove. Figure 1 of Altherr discloses a container 1 comprising an elongated

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inner wall 4. It would have been an obvious matter of design choice to lengthen the inner wall, since such a modification would have involved a mere change in the size of a component. A change in size is recognized as being within the level of ordinary skill in the art. In *Gardner v. TEC Systems, Inc.*, 220 USPQ 777 (Fed. Cir. 1884), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

With respect to claims 13 and 14, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for an inner surface of the inner wall comprises an annular peripheral protuberance. Figure 1 of Altherr discloses an inner wall 4 comprising an annular peripheral protuberance 4a that engaged into a corresponding peripheral groove 1a placed on the inner wall of the second end of a casing 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by incorporating an annular peripheral protuberance to the inner wall of the groove in order to snap the annular peripheral protuberance into an corresponding peripheral groove of the casing thus sealing the container, as taught by Altherr (column 3, lines 17-25).

6. Claims 32 and 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Giraud et al. (US 2004/0065669) in view of Simpson et al. (US Patent 6,000,550), further in view of Bozinovich et al. (US Patent 4,702,389) as applied to claim 1 above, and further in view of Belfance et al. (US Patent 7,413,083).

With respect to claim 32, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the

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desiccant agent is in powder form. Belfance discloses a container comprising a desiccant agent is in powder form (column 8, lines 9 and 10). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by using a desiccant agent in powder form, as taught by Belfance (column 8, lines 9 and 10), in order to absorb moisture that may enter the container, as taught by Giraud ([0028], lines 1-5).

With respect to claim 33, the combination of Giraud in view of Simpson, further in view of Bozinovich discloses the claimed invention except for the desiccant agent is at least one selected from the group consisting of silica gels, and molecular sieves. Belfance discloses the desiccant agent can be either silica gels or molecular sieves (column 8, lines 9 and 10). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Giraud in view of Simpson, further in view of Bozinovich by using a desiccant agent that is either silica gels or molecular sieves, as taught by Belfance (column 8, lines 9 and 10), in order to absorb moisture that may enter the container, as taught by Giraud ([0028], lines 1-5).

Response to Arguments

7. Claims 1 and 34 were amended and the limitations of the newly amended claims were not considered in combination in the previous office action. Consequently, the search has been updated, new prior art was applied, and applicant's arguments have been considered but are therefore moot.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS

/Ehud Gartenberg/
Supervisory Patent Examiner, Art Unit 3728